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In the Supreme Court of the United States

OCTOBER TERM, 1980

JACKSONVILLE BULK TERMINALS, INC., ET AL.,
PETITIONERS

v.

INTERNATIONAL LONGSHOREMEN'S ASSOCIATION,
ET AL.

ON WRIT OF CERTIORARI
TO THE UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT

BRIEF FOR THE UNITED STATES AS AMICUS CURIAE

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QUESTIONS PRESENTED

1. Whether a suit under Section 301 of the Labor-Management Relations Act to enforce the no-strike clause of a collective bargaining agreement is a "case involving or growing out of [a] labor dispute" within the meaning of Section 4 of the Norris-LaGuardia Act, notwithstanding that the strike in question was called to advance the union's political goals.

2. Whether a federal court has jurisdiction to enjoin such a contractually-barred strike where the proximate cause of the refusal to work is the union's objection, on political grounds, to cargo-handling assignments and where disputes over work assignments are subject to the mandatory grievance and arbitration clause of the collective bargaining agreement.

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INTEREST OF THE UNITED STATES

The United States has an interest in avoiding interruptions of trade with other countries resulting from actions of private citizens or groups motivated by international political concerns. In the view of the Department of State, such interruptions may be detrimental to this nation's foreign policy interests. The Department of Agriculture, which has an interest in the orderly flow of international trade in agricultural commodities, shares this view. We rec-

ognize and respect the rights of citizens to express their opinions concerning all aspects of foreign policy. Where such views are expressed by labor organizations through work stoppages that violate their collective bargaining agreements, however, First Amendment considerations do not preclude the application of appropriate restraints.

This case involves work stoppages that apparently breached a no-strike clause, that were directed by the International Longshoremen's Association (ILA) as a protest against the Soviet Union's invasion of Afghanistan, and that disrupted the movement of cargo bound for the Soviet Union. While the ILA's views reflect government policy condemning the Soviet invasion, the ILA's expression of those views through work stoppages substantially interferes with the Executive Branch's ability to conduct a flexible but controlled foreign policy involving measured responses to international events and, in particular, to assure compliance with international commitments under agreements with the U.S.S.R.

The particular questions in this case concern the power of a federal court, at the behest of private employers, to enjoin such work stoppages. The United States also has an interest in assuring that where such injunctive relief is granted, it is granted pursuant to a theory, and in a manner, consistent with national labor policy. In particular, the United States is concerned that a proper construction be given the term "labor dispute" in the Norris-LaGuardia Act, since the construction of this term may affect the application of other federal labor laws as well. See, *e.g.*, Section 203 of the Labor-Management Relations Act of 1947, 29 U.S.C. 173, authorizing the Federal Mediation and Conciliation

Service "to assist parties to labor disputes in industries affecting commerce to settle such disputes through conciliation and mediation." [1]

STATEMENT

Petitioner Jacksonville Bulk Terminals, Inc. ("JBT") operates a bulk marine shipping terminal in the Port of Jacksonville, Florida. Through its membership in an employer association, JBT is party to a collective bargaining agreement with respondent Local 1408 of the ILA, the exclusive representative of employees engaged in longshore work at the terminal (Pet. App. 6a, 30a; A. 16-17).[2] Commodities shipped through the terminal include a chemical known as superphosphoric acid, produced by petitioner Hooker Chemical Company for shipment to the Soviet Union under a bilateral trade agreement between the Soviet Union and petitioner Occidental Petroleum Corporation, which owns both JBT and Hooker (Pet. App. 30a).

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[1] Related issues under the Labor-Management Relations Act of 1947, 29 U.S.C. 141 *et seq.*, are raised in *Int'l Longshoremen's Ass'n* v. *Allied International, Inc.*, petition for cert. pending, No. 80-1663 (filed Apr. 3, 1981), and in three secondary boycott cases pending before the National Labor Relations Board, *Int'l Longshoremen's Ass'n (Allied International, Inc.)*, Case No. 1-CC-1753, JD-100-81 (Mar. 16, 1981); *Int'l Longshoremen's Ass'n (Kansas Farm Bureau, Inc., et al.)* Case Nos. 23-CC-764-1 *et seq.*, JD-99-81 (Mar. 16, 1981); *Int'l Longshoremen's Ass'n (Occidental Chemical Co.)*, Case Nos. 10-CC-1141-1 *et seq.*, JD-98-81 (Mar. 16, 1981). Because of the pending secondary boycott cases, the Board takes no position on the issues in the present case.

[2] "Pet. App." refers to the appendix to the petition for certiorari. "A." refers to the joint appendix.

On January 4, 1980, the President of the United States announced imposition of export controls on certain future shipments of grain to the Soviet Union in response to that nation's invasion of Afghanistan. Shortly thereafter, the International President of the ILA announced that the ILA was responding to the Soviet invasion by directing all ILA local affiliates on the Atlantic and Gulf Coasts to refuse to handle *any* cargo either bound for or shipped from the Soviet Union (Pet. App. 2a-3a). In compliance with this order, employees represented by Local 1408 refused to load superphosphoric acid onto three ships at JBT's terminal that were to transport that cargo to the Soviet Union under Occidental's trade agreement (*id.* at 6a, 31a). These events occurred before February 4, 1980, when the export controls were extended to superphosphoric acid (45 Fed. Reg. 8293 (1980); Pet.App. 6a, 7a-8a).

The collective bargaining agreement between JBT and Local 1408 contains a no-strike clause (A. 61)[3] and a mandatory grievance and arbitration clause

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[3] The no-strike clause provides (*ibid.*):

> 15. (A) (1) During the term of this Agreement, the Employer agrees that there shall be no lockouts of the members of the Union and the Union agrees there shall not be any strike of any kind or degree whatsoever, walkout, suspension of work, curtailment or limitation of production, slow down, or any other interference or stoppage, total or partial, of the Employer's operation for any cause whatsoever; such causes including but not limited to, unfair labor practices by the Employer or violation of this Agreement. The right of employees not to cross a bona fide picket line is recognized by the Employer. The Union shall not be financially responsible for strikes or walkouts not authorized or assented to by the Union.

covering "[m]atters under dispute" between Local 1408 and JBT (A. 62-63).[4] The agreement also contains a management rights clause reserving exclusively to JBT the "[m]anagement of [its] business and the direction of the work force" in the operation of that business (A. 60)[5] and a clause specifically making arbitrable any claims by Local

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[4] The grievance and arbitration clause provides in pertinent part (A. 62):

> 15. (B) Matters under dispute which cannot be promptly settled between the Local and an individual Employer, shall, no later than 48 hours after such discussions, be referred in writing covering the entire grievance to a Port Grievance Committee * * *. In the event this Port Grievance Committee cannot reach an agreement within five days after receipt of the complaint the written record of the dispute shall be referred to the Joint Negotiating Committee, which will function as a District Grievance Committee * * *.
>
> * * * * *
>
> A majority decision of this Committee shall be final and binding on both parties and on all Employers signing this Agreement. In the event the Committee is unable to reach a majority decision within 72 hours after meeting to discuss the case, it shall employ a professional arbitrator * * *.

[5] The management rights clause provides (A. 60):

> 13. (F) The Management of the Employer's business and the direction of the work force in the operation of the business are exclusively vested in the Employer as functions of Management. Except as specifically provided in the Agreement, all of the rights, powers and authority Employer had prior to signing of this Agreement are retained by Employer.

1408 of hardship resulting from "unreasonable or burdensome conditions" (A. 59-60).[6]

On January 28, 1980, petitioners brought suit against respondents (the ILA, Local 1408, and certain union officials) in the United States District Court for the Middle District of Florida under Section 301 of the Labor-Management Relations Act of 1947 ("LMRA"), 29 U.S.C. 185 (A. 1-14). They sought to compel arbitration "with respect to any grievance(s) relating to the shipment of Hooker's cargo to the Soviet Union through JBT's terminal," to enjoin the ILA-directed refusal to load the Soviet-bound cargo there, and to recover damages (A. 11-13). The complaint alleged, *inter alia*, that through provisions of the collective bargaining agreement, Local 1408 and the ILA had "relinquished the right to engage in a work stoppage of any kind for any

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[6] The clause respecting Union claims that work conditions are unreasonable provides (A. 59-60):

> 13. (D) (5) Where hardship is claimed by Union because of unreasonable or burdensome conditions or where work methods or operations materially change in the future, the problem shall first be discussed between the local and Management involved. In the event an agreement cannot be reached, either party may refer the dispute to the Joint Negotiating Committee and, if the matter cannot be resolved by that Committee, either party may then refer the question to an arbitrator in accordance with the procedure set forth in Clause 15(B).

In 1979, the parties negotiated a special supplemental agreement governing the handling of superphosphoric acid (A. 128-132). It specified that the provisions of the primary agreement would continue to apply except where in conflict with the supplemental agreement (A. 129). Nothing in the supplemental agreement requires that clause 13(D)(5) of the primary agreement be considered inapplicable to the handling of superphosphoric acid.

reason, including any dispute over the assignment of work, operations, or the direction of the work force" (A. 10), and it also stated that "disputes concerning work methods or operations" were subject to mandatory grievance and arbitration procedures (A. 9). It further alleged that the "dispute causing the work stoppage" was subject to the mandatory arbitration clause and that JBT was prepared to submit to arbitration in accordance with that clause (A. 10).

The district court concluded that the underlying dispute was "clearly political" because respondents' "underlying objections [were] not to the policies of [the] employer, but to the political policies of a foreign nation" (Pet. App. 32a). It concluded, accordingly, that the work stoppage did not arise out of a "labor dispute" within the meaning of the anti-injunction provision of the Norris-LaGuardia Act, Section 4, 29 U.S.C. 104, as defined in Section 13(c) of that Act, 29 U.S.C. 113(c), and that the Act therefore did not withdraw the court's jurisdiction to issue an injunction against the work stoppages (Pet. App. 32a-33a). Finding also that the work stoppages appeared to violate the no-strike clause, the court entered a preliminary injunction enjoining any further union actions with respect to loading the three ships in question (*id.* at 26a-28a). Notwithstanding its conclusion that the underlying dispute was political, the court also directed the parties to "process any grievance(s) over the shipment of cargo to and from the Soviet Union" on the three ships involved (*id.* at 27a).

Respondents appealed and the court of appeals reversed in substantial part, vacating the district court's injunction prohibiting the work stoppages

(Pet. App. 1a-25a).[7] The court held that the case involved a "labor dispute" within the meaning of the Norris-LaGuardia Act (*id.* at 14a-16a) and that a strike injunction was thus barred unless the case came within the exception to Norris-LaGuardia recognized in *Boys Markets, Inc.* v. *Retail Clerks Union, Local 770*, 398 U.S. 235 (1970), which permits injunctions against strikes that violate no-strike clauses where certain conditions are met (Pet. App. 17a-21a). The court noted (*id.* at 20a) that the *Boys Markets* criteria had been "refined" in *Buffalo Forge Co.* v. *United Steelworkers*, 428 U.S. 397 (1976), in which this Court held that a federal court may not enjoin a strike that violates a no-strike clause if the strike is not "over" a dispute arbitrable under the collective bargaining agreement. 428 U.S. at 407. Characterizing the underlying dispute in this case as "a complaint against the actions of the U.S.S.R. itself," that could not be resolved by an arbiter, the court of appeals held (Pet. App. 21a-22a) that the *Boys Markets/Buffalo Forge* requirements were not met and the strike injunction therefore could not issue.[8]

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[7] The court of appeals concluded that its jurisdiction was not defeated on grounds of mootness because the case concerned actions capable of repetition but so limited in duration as to evade judicial review (Pet. App. 8a-10a).

[8] The court affirmed the district court's order insofar as it compelled the parties to submit to arbitration the question whether the work stoppages violated the agreement's no-strike clause (Pet. App. 22a). In a companion case, *New Orleans Steamship Ass'n* v. *General Longshore Workers, ILA, Local 1418*, the court held that even where the underlying dispute is political, a strike injunction may issue to enforce an arbitrator's award determining that the strike violates a no-strike clause (Pet. App. 22a-23a).

SUMMARY OF ARGUMENT

We agree with petitioners that the judgment of the court of appeals should be reversed insofar as it vacated the district court's preliminary injunction against respondent's strike. Unlike petitioners, we believe that the case is one involving a "labor dispute" within the meaning of the Norris-LaGuardia Act. We submit, however, that the case comes within the exception recognized in *Boys Markets, Inc.* v. *Retail Clerks Union, Local 770*, 398 U.S. 235 (1970), to the Norris-LaGuardia prohibition against strike injunctions in labor disputes.

1. Section 4 of the Norris-LaGuardia Act, 29 U.S.C. 104, withdraws jurisdiction from federal courts to issue injunctions against work stoppages "in any case involving or growing out of [a] labor dispute." Section 13(c) of the Act, 29 U.S.C. 113(c), defines labor disputes as including "any controversy concerning terms or conditions of employment." The Act's language is broad because it embodies a congressional intent to take the federal courts "out of the labor injunction business except in the very limited circumstances left open for federal jurisdiction under the * * * Act." *Marine Cooks & Stewards* v. *Panama Steamship Co.*, 362 U.S. 365, 369 (1960). The Norris-LaGuardia Act "does not concern itself with the background or the motives of the dispute." *New Negro Alliance* v. *Sanitary Grocery Co.*, 303 U.S. 552, 561 (1938). So long as the controversy arises in the context of an employer-employee relationship, it is irrelevant that the motives of the labor union involved in the dispute may be political rather than economic.

The present case was brought under Section 301(a) of the Labor-Management Relations Act of 1947, 29 U.S.C. 185(a), to enforce the no-strike clause of a

collective bargaining agreement. Petitioners' complaint alleged that the underlying dispute involved the refusal of respondent Local 1408 and its members to accept certain assignments that involved handling Soviet-bound cargo and that petitioner JBT was willing to arbitrate the dispute over the assignments under the agreement. Respondents had chosen to strike instead, and the complaint alleged that the work stoppage violated the no-strike clause of the agreement and it sought enforcement of that clause. Thus the case presented a dispute between parties to a labor agreement over its application to a union-directed work stoppage by the employees. This is a classic labor dispute notwithstanding the fact that respondents' objections to handling Soviet-bound cargo are based on their opposition to Soviet aggression.

2. A conclusion that the suit is a case involving a labor dispute within the meaning of the Norris-LaGuardia Act does not, however, resolve the question whether the district court had jurisdiction to enjoin the strike as a breach of the no-strike clause. As this Court held in *Boys Markets, Inc.* v. *Retail Clerks Union, Local 770, supra*, the provisions of Norris-LaGuardia must be accommodated to the subsequently enacted provisions of Section 301 of the LMRA and to the strong federal policy favoring arbitration of labor disputes. In light of those considerations, a federal court may enjoin a strike if it appears to violate a no-strike clause, is called over a dispute "subject to adjustment and arbitration under the collective-bargaining agreement and * * * the [employer is] ready to proceed with arbitration * * *." 398 U.S. at 254.

The present case meets that test. The district court found the strike to be a probable violation of the no-strike clause; the strike was called because

of respondents' objections, on political grounds, to work assignments involving Soviet-bound cargo; and disputes over work assignments were subject to the broad mandatory grievance and arbitration clause, which applied to all "[m]atters under dispute." That a grievance stating the employees' objection, on political grounds, to such assignments would have little hope of success is no argument against finding such a grievance arbitrable, given the presumption of arbitrability recognized by this Court. *Gateway Coal Co.* v. *United Mine Workers*, 414 U.S. 368, 377 (1974).

Because the work stoppage at issue here was a strike over an arbitrable grievance, the court of appeals erred in concluding that *Buffalo Forge Co.* v. *United Steelworkers*, 428 U.S. 397 (1976), barred issuance of the injunction. In *Buffalo Forge*, the Court merely emphasized that a finding that the strike was called over an arbitrable grievance is a precondition to enjoining the strike.

ARGUMENT

I. A SUIT UNDER SECTION 301 OF THE LABOR-MANAGEMENT RELATIONS ACT TO ENFORCE THE NO-STRIKE CLAUSE OF A COLLECTIVE BARGAINING AGREEMENT IS A "CASE INVOLVING OR GROWING OUT OF [A] LABOR DISPUTE" WITHIN THE MEANING OF SECTION 4 OF THE NORRIS-LAGUARDIA ACT, NOTWITHSTANDING THAT THE STRIKE IN QUESTION WAS CALLED TO ADVANCE THE UNION'S POLITICAL GOALS

A. The Norris-LaGuardia Act Has Broad Application To All Disputes Over Work Stoppages Between Employers and the Collective Bargaining Representatives of their Employees

In the Norris-LaGuardia Act, 29 U.S.C. 101 *et seq.*, Congress declared that, except in certain extraordinary circumstances, the federal courts are not to

issue injunctions against labor unions in any "case involving or growing out of any labor dispute," and it restricted the jurisdiction of federal courts accordingly. Section 4, 29 U.S.C. 104.[9] The term "labor dispute" is broadly defined as including "any controversy concerning terms or conditions of employment * * *." Section 13(c), 29 U.S.C. 113(c).[10]

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[9] Section 4 of the Norris-LaGuardia Act, 29 U.S.C. 104, provides in pertinent part:

> No court of the United States shall have jurisdiction to issue any restraining order or temporary or permanent injunction in any case involving or growing out of any labor dispute to prohibit any person or persons participating or interested in such dispute (as these terms are herein defined) from doing, whether singly or in concert, any of the following acts:
>
> (a) Ceasing or refusing to perform any work or to remain in any relation of employment; * * *.

[10] Section 13 of the Norris-LaGuardia Act, 29 U.S.C. 113, provides in pertinent part:

> When used in this Act, and for the purposes of this Act—
>
> (a) A case shall be held to involve or grow out of a labor dispute when the case involves persons who are engaged in the same industry, trade, craft, or occupation; or have direct or indirect interests therein; or who are employees of the same employer; or who are members of the same or an affiliated organization of employers or employees; whether such dispute is: (1) between one or more employers or associations of employers and one or more employees or associations of employees; * * * or when the case involves any conflicting or competing interests in a "labor dispute" (as hereinafter defined) of "persons participating or interested" therein (as hereinafter defined).
>
> (b) A person or association shall be held to be a person participating or interested in a labor dispute if

The court of appeals correctly held that this controversy over the legality, under the collective bargaining agreement, of the ILA-directed refusal to handle Soviet-bound cargo involves such a "labor dispute," although, as we show in point II, *infra*, the court erred in vacating the injunction.

In *Marine Cooks & Stewards* v. *Panama Steamship Co.*, 362 U.S. 365 (1960), a case involving picketing of a foreign ship by members of a maritime union protesting the "'loss of their livelihood to foreign flagships with substandard wages or substandard conditions'" (*id.* at 368), this Court emphasized that the language of the Norris-LaGuardia Act was not to be given a cramped construction, observing (*id.* at 369; footnote omitted):

> Th[e] Act's language is broad. The language is broad because Congress was intent upon taking the federal courts out of the labor injunction business except in the very limited circumstances left open for federal jurisdiction under the Norris-LaGuardia Act. The history and background that led Congress to take this view have been adverted to in a number of prior opinions

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relief is sought against him or it, and if he or it is engaged in the same industry, trade, craft, or occupation in which such dispute occurs, or has a direct or indirect interest therein, or is a member, officer, or agent of any association composed in whole or in part of employers or employees engaged in such industry, trade, craft, or occupation.

(c) The term "labor dispute" includes any controversy concerning terms or conditions of employment, or concerning the association or representation of persons in negotiating, fixing, maintaining, changing, or seeking to arrange terms or conditions of employment, regardless of whether or not the disputants stand in the proximate relation of employer and employee.

> of this Court in which we refused to give the Act narrow interpretations that would have restored many labor dispute controversies to the courts.

Accord, *Order of R.R. Telegraphers* v. *Chicago & N.W. Ry.*, 362 U.S. 330, 335 (1960); *Milk Wagon Drivers' Union, Local 753* v. *Lake Valley Farm Products, Inc.*, 311 U.S. 91, 101 (1940).

That the motives of those involved in a particular dispute may be characterized as political is no automatic bar to its classification as a "labor dispute" for Norris-LaGuardia purposes. Thus, in *New Negro Alliance* v. *Sanitary Grocery Co.*, 303 U.S. 552 (1938), the Court held that the Act prohibited an injunction against picketing by members of a civic group aimed at inducing a store to employ a greater number of black employees. In explaining why it was immaterial that the interests of the picketers, who were neither union organizers nor store employees, were not economic concerns of the sort commonly associated with labor unions, the Court stated (303 U.S. at 561):

> The Act does not concern itself with the background or the motives of the dispute. The desire for fair and equitable conditions of employment on the part of persons of any race, color, or persuasion, and the removal of discriminations against them by reason of their race or religious beliefs is quite as important to those concerned as fairness or equity in terms and conditions of employment can be to trade or craft unions or any form of labor organization or association.

As the Court later explained in *Columbia River Packers Ass'n, Inc.* v. *Hinton*, 315 U.S. 143, 147 (1942), the critical element of *New Negro Alliance*

was that "the employer-employee relationship was the matrix of the controversy." Because that element was missing in *Hinton*, which concerned simply "a dispute among businessmen over the terms of a contract for the sale of fish" (315 U.S. at 145), the Court found Norris-LaGuardia inapplicable there. See also *Bakery Sales Drivers Local Union No. 33* v. *Wagshal*, 333 U.S. 437 (1948) (Norris-LaGuardia Act inapplicable where union's picketing of employer's former customer concerned disagreement with delivery times and payment methods on which the customer had insisted and where no work stoppages, picketing, or other actions were directed at the employer). In no case has the Court ever held that, where employees engage in a union-sanctioned work stoppage, the dispute between the union and the employer over the union's right to call the strike and the employees' right to refuse to perform their work is not a "labor dispute" if the union's motives are "political" rather than "economic." [11]

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[11] Petitioners' suggestion (Pet. Br. 19-20) that this Court's decision in *Eastex, Inc.* v. *NLRB*, 437 U.S. 556 (1978), supports their contention that the existence of political motives takes the work stoppage controversy outside the area of "labor disputes" is incorrect. *Eastex* concerned the question whether employees' distribution of literature in nonworking areas and during nonworking hours of the employer's premises was a protected activity under Section 7 of the National Labor Relations Act, 29 U.S.C. 157. While the Court found the distributions at issue there protected under Section 7, it assumed that in cases in which such literature was only remotely related to "employees' interests as employees," such distributions would not enjoy Section 7 protection. 437 U.S. at 567-568. But the consequence of the latter holding would be simply that the employer would not be prohibited by Section 8(a)(1) of the Act from discharging or disciplining employees for the distributions. It would not establish that

B. This Section 301 Suit To Enforce the No-Strike Clause of the Collective Bargaining Agreement Is a Case Involving a Labor Dispute for Purposes of the Norris-LaGuardia Act

Petitioners' contention (Pet. Br. 10-18) that their lawsuit does not involve a labor dispute within the meaning of the Norris-LaGuardia Act is refuted by the very terms of their complaint. While a court "is clearly empowered to pierce the parties' own characterization of their dispute" (*United States Steel Corp.* v. *United Mine Workers*, 519 F.2d 1236, 1248 (5th Cir. 1975), cert. denied, 428 U.S. 910 (1976)), there is no reason to reject the complaint's description of the particular acts for which petitioners sought relief and the legal theory on which relief was sought.

Petitioners invoked the district court's jurisdiction under Section 301(a) of the LMRA, 29 U.S.C. 185(a), over suits for violation of contracts between employers and labor organizations. Petitioners alleged that the ILA and Local 1408 were refusing to refer employees to JBT to load shipments of superphosphoric acid bound for the Soviet Union and had informed JBT that all ILA members were refusing to handle such cargo (A. 8). Petitioners further alleged (A. 6-7, 9-10) that this constituted a work stoppage in violation of the collective bargaining agreement, which guaranteed JBT the right to decide methods of work or work assignments, required Local 1408 to resolve any disputes about such matters through the grievance and arbitration procedure,

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no labor dispute existed. Similarly, if the employees protested such sanctions under the collective bargaining agreement, an arbitrator might ultimately decide that the sanctions were proper, but this would hardly alter the common-sense understanding of the matter as a labor dispute.

and barred strikes during the term of the contract " 'for any cause whatsoever' " (A. 7).

Petitioners thus alleged the existence of a dispute between the parties to a labor agreement over the application of that agreement to a work stoppage instigated by the collective bargaining representative; and they correctly rested their entitlement to injunctive relief squarely on rights arising from that labor agreement.[12] It is untenable to argue that such a dispute is not a labor dispute because the union's motives for the work stoppage are political. Petitioners did not ask the district court to decide whether the ILA was justified in objecting to the Soviet Union's invasion of Afghanistan; they asked the court to grant specific enforcement of the collective bargaining agreement, through which, they alleged, the employees had waived the right, during the term of the contract, to strike for any reason at all. The fact that, in order to argue the inapplicability of the Norris-LaGuardia Act, petitioners have now chosen to gloss over the theory of their complaint does not alter the character of the case.[13]

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[12] Only JBT, as the employer, was a party to the collective bargaining agreement and thus only it was technically entitled to enforce the contract; JBT, however, was merely a subsidiary of a corporation whose corporate parent was petitioner Hooker, and Hooker, in turn, was owned by petitioner Occidental (Pet. App. 30a). The addition of Hooker and Occidental as plaintiffs did not change the character of the lawsuit, since the suit was alleged to arise solely under Section 301(a) of the LMRA, and only rights under the bargaining agreement were relied on (A. 2-13).

[13] Because of the dispute over the no-strike clause of the collective bargaining agreement, this case is distinguishable from *NLRB* v. *ILA (Ocean Shipping)*, 332 F.2d 992 (4th Cir. 1964), and *Khedivial Line, S.A.E.* v. *Seafarers' Int'l*

The agreement not to strike during the term of the agreement established a contractual condition of employment; the dispute over the legality of the strike is thus literally within the language of the Norris-LaGuardia Act. Where, in addition, as we show below (pages 22-26, *infra*), the strike itself is over an arbitrable dispute, *i.e.*, a dispute about cargo-handling assignments and the employer's right to choose its customers without consulting the union, the statutory language applies a fortiori.

It is, in fact, arguable that a labor dispute for purposes of Norris-LaGuardia might be present even in the absence of a dispute over the terms of the collective bargaining agreement. Regardless of the political character of the ILA's objections to handling Soviet-bound cargo, those objections were expressed in a strike by the employees against their employer

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Union, 278 F.2d 49 (2d Cir. 1960), on which petitioners seek to rely (Pet. Br. 16-18). *Khedivial Line*, in which the Second Circuit stated in dictum that no labor dispute within the meaning of the Norris-LaGuardia Act was presented, was a suit by a foreign shipowner which had no collective bargaining agreement with the picketing union. *Ocean Shipping* was a secondary boycott case in which the National Labor Relations Board sought enforcement of its unfair labor practice order. Whether or not the Fourth Circuit was correct in its holding that the union's politically-inspired refusal to unload Cuba-bound ships did not present a "labor dispute" within the meaning of the National Labor Relations Act (which borrows its definition of "labor dispute" in Section 2(9), 29 U.S.C. 152(9), from the Norris-LaGuardia Act), that decision has not prevented the Fourth Circuit from implicitly finding the existence of a "labor dispute" for Norris-LaGuardia purposes in *Hampton Roads Shipping Ass'n* v. *ILA*, 631 F.2d 282 (4th Cir. 1980), petition for cert. pending, No. 80-1058 (filed Dec. 17, 1980), where, as here, the employer sought enforcement of a no-strike clause.

which focused on particular work assignments. Thus "the employer-employee relationship was the matrix of the controversy," and under this Court's decisions, the case is one involving a labor dispute within the meaning of the Norris-LaGuardia Act. *Columbia River Packers Ass'n, Inc.* v. *Hinton, supra*, 315 U.S. at 147, explaining *New Negro Alliance* v. *Sanitary Grocery Co., supra.*[14] In any event, because of the existence of the dispute over the application of the terms of the agreement that in large part defines the employer-employee relationship, the Court need not reach so far to find that this case is one involving a "labor dispute."

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[14] Because this case involves the employer-employee relationship, petitioners' citation (Pet. Br. 10-11) of *American Federation of Musicians* v. *Carroll*, 391 U.S. 99 (1968), is inapposite. In the particular passage quoted by petitioners (391 U.S. at 106), the Court was stating the criteria for determining not merely whether there was a labor dispute, but whether a certain group of independent contractors was a "labor group" for the purposes of applying the Norris-LaGuardia exemption from Sherman Act coverage. The Court also implied (*ibid.*) that while the Norris-LaGuardia Act reacehd union activity *outside of* "the immediate employer-employee relation" where that activity was aimed at uniformity of labor standards, union activity *within* that relationship was at the core of the Norris-LaGuardia conception of a "labor dispute."

II. A FEDERAL COURT HAS JURISDICTION TO ENJOIN A CONTRACTUALLY-BARRED STRIKE WHERE THE PROXIMATE CAUSE OF THE REFUSAL TO WORK IS THE UNION'S OBJECTION, ON POLITICAL GROUNDS, TO CARGO-HANDLING ASSIGNMENTS AND WHERE DISPUTES OVER WORK ASSIGNMENTS ARE SUBJECT TO THE MANDATORY GRIEVANCE AND ARBITRATION CLAUSE OF THE COLLECTIVE BARGAINING AGREEMENT

As we have argued in point I, *supra*, this case involves a "labor dispute" within the meaning of the Norris-LaGuardia Act; but this conclusion does not finally resolve the question whether the district court was empowered to enjoin the work stoppage at issue here. Resolution of that question requires an examination of the case in light of the principles set out in *Boys Markets, Inc.* v. *Retail Clerks Union, Local 770*, 398 U.S. 235 (1970), and *Buffalo Forge Co.* v. *United Steelworkers*, 428 U.S. 397 (1976), with respect to an exception to the Norris-LaGuardia Act bar to strike injunctions for strikes that appear to violate the no-strike clause of an applicable collective bargaining agreement. As we show below, this case satisfies all the conditions set down in *Boys Markets* and *Buffalo* Forge for the entry of a strike injunction. The court of appeals, therefore, erred in reversing the judgment of the district court.

In *Boys Markets, Inc.* v. *Retail Clerks Union, Local 770, supra*, the Court "re-examine[d] the holding of *Sinclair Refining Co.* v. *Atkinson*, 370 U.S. 195 (1962), that the anti-injunction provisions of the Norris-LaGuardia Act preclude a federal district court from enjoining a strike in breach of a no-strike obligation under a collective-bargaining agreement, even though that agreement contains provisions, en-

forceable under § 301(a) of the Labor Management Relations Act, 1947, for binding arbitration of the grievance dispute concerning which the strike was called." 398 U.S. at 237-238 (footnotes omitted). The Court overruled *Sinclair* and held that, in order to accommodate the Norris-LaGuardia anti-injunction provisions to the subsequently enacted provisions of Section 301(a) the LMRA and to the strong federal policy favoring arbitration emphasized in the *Steelworkers Trilogy*,[15] it was essential to recognize an exception to the Norris-LaGuardia injunction prohibition for cases in which the employer sought to enforce the union's contractual obligation to arbitrate grievance disputes rather than strike over them. Noting that the effectiveness of arbitration as a substitute for industrial strife would be impaired if an employer were deprived of "a remedial device that merely enforces the obligation that the union freely undertook under a specifically enforceable agreement to submit disputes to arbitration" (*Boys Markets, Inc.* v. *Retail Clerks Union, Local 770, supra*, 398 U.S. at 252-253 (footnote omitted)), the Court held that a federal court *may* enjoin a union strike if it determines "that the grievance in question was subject to adjustment and arbitration under the collective bargaining agreement and that the [employer is] ready to proceed with arbitration * * *." *Id.* at 254.

In *Buffalo Forge Co.* v. *United Steelworkers, supra*, a case in which the employer sought to enjoin a sympathy strike, the Court reaffirmed the *Boys Markets* requirement that there be a showing that the

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[15] *United Steelworkers* v. *American Mfg. Co.*, 363 U.S. 564 (1960); *United Steelworkers* v. *Warrior & Gulf Navigation Co.*, 363 U.S. 574 (1960); *United Steelworkers* v. *Enterprise Wheel & Car Corp.*, 363 U.S. 593 (1960).

grievance underlying a strike is arbitrable before the strike is enjoined as a violation of a no-strike clause. The striking employees in *Buffalo Forge* had no grievance of their own against the employer to submit to arbitration but were merely striking in support of an economic strike called by sister locals. The Court reasoned (428 U.S. at 407-408; emphasis in original) that because the respondent union's strike "was not *over* any dispute between the Union and the employer that was even remotely subject to the arbitration provisions of the contract," it did not constitute an evasion of "an obligation to arbitrate." The Court accordingly held that the strike could not be enjoined under *Boys Markets* (*id.* at 412-413).

Contrary to the decision of the court of appeals (Pet. App. 21a-22a), the present case meets the *Boys Market/Buffalo Forge* test. The source of the court's error is its failure to recognize that there are, in fact, *several* underlying disputes, at least one of which is arguably arbitrable. There are disputes of a sort between the Soviet Union and the country it invaded and between the Soviet Union and the ILA, which objects to the invasion as an unjustified act of aggression. To be sure, these matters are not within the competence of any American labor arbitrator, and submitting them to arbitration would be an absurdity. But the ILA's objection to the Soviet invasion led to its conclusion that the handling of Soviet-bound cargo is objectionable. Whether respondents had any right under the collective bargaining agreement to dictate JBT's selection of its customers or to object to cargo-handling assignments where the cargo is, by virtue of its destination, politically offensive, *is* a question that an arbitrator may resolve. The arbitration and grievance clause

is a broad one, applying to all "[m]atters under dispute" (see pages 4-5, *supra*); and the management rights clause and the clause providing for arbitration of disputes over union claims that "hardship" has been created by "unreasonable" work conditions (see pages 5-6, *supra*) supply the arbitrator with a basis in the collective bargaining agreement for deciding the dispute.

Given those provisions of the collective bargaining agreement and the general presumption of arbitrability that this Court has recognized (see *Gateway Coal Co.* v. *United Mine Workers*, 414 U.S. 368, 377 (1974)), an arbitrable dispute exists, and the arbitrator's jurisdiction would not be ousted by a showing that the ILA's motives for objecting to the cargo-handling assignments are political. Cases involving work scheduling or work assignment disputes that have arisen because of political or religious or philosophical convictions held by employees are hardly unknown to the arbitral forum. See, *e.g.*, *Norris Industries*, 68 Lab. Arb. Rep. (BNA) 171 (1977) (discharge of employee who took two hours off Wednesday night shifts to attend Bible study meetings that she regarded as a religious obligation); *Rockford Newspapers, Inc.*, 63 Lab. Arb. Rep. (BNA) 251 (1974) (discipline of reporter who refused to write a story on the grounds that it would violate his professional integrity); *Ralston Purina Co.*, 61 Lab. Arb. Rep. (BNA) 14 (1973) (suspension of employee who refused, on moral and political grounds, to raise and lower the American flag outside the plant); *Reynolds Metals Co.*, 56 Lab. Arb. Rep. (BNA) 592 (1967) (continuing refusal, on religious grounds, to work Sunday overtime). In such cases the arbitrators are not called upon to decide the

merits of the moral or religious or political beliefs held by the employees; they decide whether, under the collective bargaining agreement, the employees may claim exemption on such grounds from the work assignments or work schedules in question and whether the employers' sanctions are justified. Like the claims in those cases, the dispute underlying this case over cargo-handling assignments—a dispute that petitioners were willing to arbitrate (A. 9)—is "grist in the mills of the arbitrators." *United Steelworkers* v. *Warrior & Gulf Navigation Co.*, 363 U.S. 574, 584 (1960) (footnote omitted).[16]

Whether respondents would prevail in arbitration on a claim that it is unreasonable, within the meaning of the collective bargaining agreement, for JBT to require ILA employees to handle Soviet-bound cargo and that JBT should thus select only customers who do not transport such shipments is doubtful. But this is not a valid reason for declaring the dispute inarbitrable. As this Court observed in *United Steelworkers* v. *American Mfg. Co.*, 363 U.S. 564, 567-568 (1960) (footnotes omitted):

> The function of the court is very limited when the parties have agreed to submit all questions of contract interpretation to the arbitrator. It is confined to ascertaining whether the party seeking arbitration is making a claim which on its

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[16] In their brief in this Court, petitioners speak only of the contract's guarantee, in the management rights clause, of JBT's right to choose its customers; they do not refer, as did their complaint (A. 9), to the clause providing for arbitration of claims by the union that hardship exists by virtue of "unreasonable or burdensome conditions" (Pet. Br. 25-31). We assume that this does not indicate that petitioners have disavowed the allegations of their complaint and would now be unwilling to arbitrate such a claim as a condition to enforcement of the no-strike clause.

> face is governed by the contract. Whether the moving party is right or wrong is a question of contract interpretation for the arbitrator. * * * .
>
> The courts, therefore, have no business weighing the merits of the grievance, considering whether there is equity in a particular claim, or determining whether there is particular language in the written instrument which will support the claim. The agreement is to submit all grievances to arbitration, not merely those which the court will deem meritorious. The processing of even frivolous claims may have therapeutic values of which those who are not a part of the plant environment may be quite unaware.

In the present case, of course, the court of appeals did not directly run afoul of this admonition because it did not consider whether respondents, rather than engaging in a work stoppage, might have submitted to arbitration a claim that ILA members employed by JBT should not be asked to load Soviet-bound cargo. But in a case presenting a *Boys Markets* injunction issue, a failure even to consider the arbitrability of such a claim is at least as serious an error as invading the province of the arbitrator and deciding that the claim is not arbitrable because it is not meritorious.

In sum, petitioners in this case satisfied both the literal requirements and the policy concerns expressed in *Boys Markets* and *Buffalo Forge* with respect to specific enforcement of a no-strike clause, pending arbitration. As the Court explained in *Buffalo Forge* (428 U.S. at 407):

> The driving force behind *Boys Markets* was to implement the strong congressional preference for the private dispute settlement mechanisms agreed upon by the parties. Only to that extent

> was it held necessary to accommodate § 4 of the Norris-LaGuardia Act to § 301 of the Labor Management Relations Act and to lift the former's ban against the issuance of injunctions in labor disputes. Striking over an arbitrable dispute would interfere with and frustrate the arbitral processes by which the parties had chosen to settle a dispute.

In the present case, as we have shown, the collective bargaining agreement provided a private dispute settlement mechanism to which respondents might have resorted. Their decision to call a strike rather than run the risk of losing in arbitration frustrated the contractual grievance and arbitration process. The issuance of an injunction compelling them, pending arbitration, to abide by the no-strike clause to which they agreed thus serves the policy of the federal labor laws.[17] Accordingly, the Court need not overrule its decision in *Buffalo Forge*, as petitioners urge (Pet. Br. 31-43),in order to hold that the court of appeals erred in vacating the district court's judgment enforcing the no-strike clause.

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[17] Should a union, through collective bargaining, achieve a contractual right to refuse work assignments on conscientious grounds such as those involved in this case, and subsequently win an arbitration award based on that contractual right, that result would also serve the policy of the federal labor laws. Moreover, such a work stoppage would be based on a determination of private contractual rights rather than the refusal of a federal court to enjoin a contractually-barred strike, and might for that reason be somewhat less likely to be viewed by other nations as reflecting an extension of United States foreign policy.

CONCLUSION

For the foregoing reasons, the judgment of the court of appeals should be reversed insofar as it ordered the district court to vacate its injunction against respondents' strike.

Respectfully submitted.

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